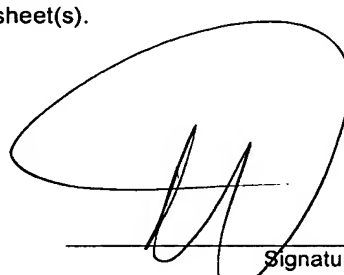


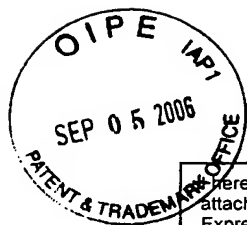


Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
		05708/P010US/08008819
	Application Number 10/727,177-Conf. #5985	Filed December 3, 2003
	First Named Inventor Mary C. Tannenbaum	
	Art Unit 2614	Examiner G. Gauthier
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>24,745</u></p> <p> _____ Signature David H. Tannenbaum Typed or printed name (214) 855-8333 Telephone number September 5, 2006 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>		

Pre-Appeal Brief Request for Review	
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV568266314US on the date shown below in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450	
Dated: September 5, 2006	Signature: <u>Susan Bloomfield</u> (Susan Bloomfield)



I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV568266314US, on the date shown below in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: September 5, 2006 Signature:

Susan Bloomfield
(Susan Bloomfield)

Docket No.: 05708/P010US/08008819
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Mary C. Tannenbaum

Application No.: 10/727,177

Confirmation No.: 5985

Filed: December 3, 2003

Art Unit: 2614

For: TIME-CONTROLLED MESSAGING SYSTEM

Examiner: G. Gauthier

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

Applicant hereby requests that a panel of Examiners formally review the legal and factual basis of the rejections of record prior to the filing of an Appeal Brief. This Request is filed with a Notice of Appeal.

REASONS FOR REQUESTED PRE-APPEAL REVIEW

I. THE REJECTION

Claims 1-36, 44 and 48-51 were rejected under 35 U.S.C. § 102(a) as being anticipated by Bellomo (US 6,504,908 B1).

II. ISSUES TO BE RESOLVED

1. The Examiner did not properly address all the claim limitations under a 35 U.S.C. § 102 (a) "anticipation" rejection.

2. The Examiner did not properly apply the cited reference with respect to claim elements of several of the claims.

3. The Examiner improperly combined an “anticipated” rejection with a second reference.

4. The Examiner failed to allow an amendment which was in keeping with matter already claimed.

III. APPLICANT’S REMARKS

1. Comments with respect to issue 1

Claim 1 recites that the system has a memory for storing a message to be played at a recipient’s location and that the play time is *contained in a communication*. The Examiner did not address the limitation that the play time is *contained in a communication*. Nothing in the Bellomo reference teaches or suggests that the play time of the Bellomo message is contained in a communication.

Claim 24 was paired with claim 9 and both claims were rejected based on the same passage of the reference. However, these claims have different recitations and thus could not have been rejected for the same reason. This is improper on its face.

The same is true for the following claim pairings. Claims 25 and 13; claims 29 and 14; claims 30 and 12; claims 32 and 17; claims 48 and 8; 49 and 9; claims 50 and 9; and claims 51 and 16. Thus, claims 25, 29, 30, 32, 48, 49, 50 and 51 were not properly rejected and thus these claims should be held allowable.

2. Comments with respect to issue 2

Claim 2 recites that the message is to be played at the play time *without regard to any action taken by said message recipient*. The Examiner cited Bellomo column 5, lines 53–65. However, that same paragraph extends into column 6, and beginning at line 2 there is a critical sentence that negates the Examiner’s position. The sentence reads (bolding added), *The next step 305 announces the current time followed by instructions to press the reset button to hear the reminder message*. Clearly, the Bellomo reference requires activity on the part of the recipient to hear the message which is in direct contradiction to the recitation of claim 2 and directly contrary to the Examiner’s position.

Claim 4 specifically recites that the message can be played as a video message. The Examiner points to a video processor in Bellomo. Despite what the Examiner has said, Applicant cannot find any place in the reference where the video processor is used to provide messages to the user and thus the Examiner has no basis to conclude that Bellomo teaches that video messages are delivered to the recipient. The video processor could be used, for example, to send video images back to a monitor desk.

Claim 5 recites that *at least a portion of said particular message is received concurrently with said play time*. Despite what the Examiner has said, nothing in the Bellomo reference, including the portion cited by the Examiner even suggests that a play time (or any other time) is sent concurrently with the actual message.

Claims 6 and 35 are directed to the feature wherein a message recipient can respond to a message, the response being to a call-back number associated with the message. Despite what the Examiner has said, nothing in Bellomo even suggests such a call-back number. The Examiner is apparently referring to the fact that Bellomo does place a call (or some form of communication) if the user **does not listen to a message**. This operation, however, is exactly the reverse of the claim since it is enabled only when the message recipient *fails to listen*, not when the message *is played*, as specifically recited. Of equal importance is the fact that in Bellomo this call-back communication is sent to a *pre-established location* and not to a *call-back number associated with a message*, as specifically claimed.

Claim 8 is directed to adding play times to messages that arrive without play times. Despite what the Examiner has said, nothing in the Bellomo reference even hints that a time can be added to a message that otherwise has no play time.

Claims 9 is directed to selecting a message to be played based on external information available at the time that message is played. Despite what the Examiner has said, nothing in Bellomo even hints that a message is selected based on external criteria.

Claim 10 is directed to selecting a message to be played based on information sent by a message sender. Despite what the Examiner has said, nothing in Bellomo even hints that a message is selected based on information from a sender.

Claims 11 and 31 are directed to the situation where the *message* to be played to the recipient is controlled by local sensors. Claim 11 is directed to playing a message determined by a sensor local to the recipient, the message being played at a particular time as controlled by another message. Claim 31 plays a message back to a sender, the message being determined by a local sensor. Despite what the Examiner has said, nothing in Bellomo addresses these limitations in any manner.

Claim 13 is directed to the feature wherein the play time is continuous for a period of time as controlled by the information received with the message. Nothing in the portions of the reference cited by the Examiner even hints at a continuous play time. In fact, the reason for a continuous play time is to be sure that the recipient hears the message. In the reference, this situation is handled by making the recipient actually push the reset button to hear the message. Thus the claimed concept is directly opposite from what is taught by the reference.

Claim 14 is directed to the delivery of the message in a broadcast mode and wherein the memories for storing the message are associated with different receiving users. Despite what the Examiner has said, nothing in Bellomo even hints at the claim limitation where the messages arrive in a broadcast mode and can be stored at a plurality of locations.

Claims 15 and 26 are directed to an override control for allowing a message to be played at other than the set time. Despite what the Examiner has said, nothing in Bellomo teaches or hints that the play time can be changed in any manner.

Claim 16 is directed to importing at playtime a pre-identified message stored at a remote location. Despite what the Examiner has said, nothing in Bellomo even hints at the importation of messages stored at remote locations.

Claim 17 is directed to allowing a message recipient's system to control the format of a received message. Despite what the Examiner has said, nothing in Bellomo refers in any manner to allowing the recipient's system to control the format of the recording.

Claims 18, 27, and 36 are directed to the situation where the playtime is a category and not a specific time. Despite what the Examiner has said, nothing in Bellomo refers in any manner to allowing the play time to be category specific.

3. Comments with respect to issue 3

Claim 19 was improperly rejected because the Examiner says that *Hogan* shows some feature of the claimed invention. This is a 35 U.S.C. § 102 (a) rejection and thus a citation to a second reference, such as *Hogan*, is improper on its face. In addition, in this context, an *indication of a message* is a pointer to a message and not the message itself.

4. Comments with respect to issue 4

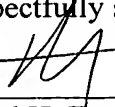
Applicant tried to amend claim 28 to include therein the limitations of claim 34 and claim 44 has been amended to more clearly recite that the message is played for the recipient without requiring any action on the part of the recipient. The Examiner refused to allow these amendments. For the reasons discussed above with respect to claim 2, namely that the cited reference specifically requires action on the part of the user before a message can be delivered, claims 28 and 44, as Applicant has tried to amend them, should be held allowable.

IV. SUMMARY

In view of the above, Applicant respectfully traverses the rejections of record, and respectfully requests that the review panel reverse the outstanding rejections of record and pass this application to issue. The required fee for the Notice of Appeal filed with this request is shown on the attached transmittal sheet. If any additional fee is due, please charge Deposit Account No. 06-2380, under Order No. 05708/P010US/08008819 from which the undersigned is authorized to draw.

Dated: September 5, 2006

Respectfully submitted,

By 
David H. Tannenbaum
Registration No.: 24,745
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8000
(214) 855-8200 (Fax)
Attorney for Applicant